

FINAL STATEMENT OF REASONS

Fuel Hazard Reduction, 2004

Title 14 of the California Code of Regulations (14 CCR):

Amend:

§ 895.1 Definitions; § 1052 Emergency Notice; § 1052.1 Emergency Conditions

Adopt:

§ 1052.4 Emergency Notice for Fuel Hazard Reduction.

UPDATED INFORMATION: OVERVIEW OF REGULATORY ACTION AND ADOPTED REGULATION

On March 2, 2005, after reviewing comment and correspondence from concerned citizens and other agencies, and considering testimony presented at a public hearing, the State Board of Forestry and Fire Protection (Board) adopted amendments to the Forest Practice Rules (FPRs) as proposed in its public notice published on February 15, 2005. The regulation language published in the February notice reflected amendments to the originally proposed rule which was published for 45 days beginning on September 3, 2005.

The adopted regulation provides regulatory relief for an emergency condition relating to wildfire threat and hazardous fuel conditions in the State's private timberlands, in accordance with existing statute PRC 4592. The regulation defines an Emergency Condition under 14 CCR §1052.1 and specifies the location, treatments and environmental protection measures related to the removal of live and dead fuel (vegetation) hazards near communities, roads and infrastructure facilities. The rule allows filing an Emergency Notice instead of a Timber Harvesting Plan when operations are conducted in accordance with the proposed rule conditions of §1052.4, Emergency Notice for Fuel Hazard Reduction, thus creating regulatory relief.

The final adopted regulation language included changes that were provide to interested public persons in a 15 Day Notice of amendments to a proposed regulation and those determined by the Board to have been non substantial in accordance with GC § 11346.8(c). The changes adopted primarily address the maximum tree diameter permitted to be harvested by the proposed regulation. Other minor revisions related to general grammatical, consistency edits were also added to the amended rule language. These include specific further definition of the emergency conditions to include crown fuel reduction. These revisions are expected to improve efficient implementation and interpretation of rule, reducing confusion and improving compliance. The non substantive revisions provide no cost or environmental impacts to the regulated community or agencies involved result due to revisions.

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The following changes were adopted by the Board to the regulation language in the 15 day notice published on February 15, 2005 as follows:

14 CCR § 1052.1 (e) Emergency Conditions - Board added that the emergency conditions related to wildfire threat under this subsection include the need to eliminate vertical and horizontal continuity of crown fuels in addition to understory and surface fuels. The term and/or crown fuel was added.

14 CCR § 1052.4 (d) (2) Emergency Notice for Fuel Hazard Reduction

14 CCR § 1052.4 (d) describes the vegetative treatments permitted under the emergency notice. The original rule language limited tree removal to trees less than 30 inches stump diameter. After considerable deliberation and evaluation, the Board considered as an option in the 15 day notice to reduce the maximum harvest limit to 24 inches stump diameter, with exceptions permissible up 30 inches when determined by the RPF that such larger tree removals are necessary to meet fuel hazard reduction goals stated in 14 CCR 1052.1 (e). This option was adopted by the Board.

A non substantive amendment was included in this section. The word “bark” diameter was added to clarify the location on the stump where maximum width would be measured. .

14 CCR § 1052.4 (f) Emergency Notice for Fuel Hazard Reduction

This section was added to improve regulation enforceability by CDF field inspectors. Permits can be filed and operated simultaneously under the 14 CCR 1052.4 Emergency Notice for Fuel Hazard Reduction and under 14 CCR 1038 (b) Exemption for Harvests of Dead, Dying and Disease Trees. This could create an enforcement problem in that the 1038 (b) exemptions have no tree diameter size limit for removal of dead, dying or diseased trees. Inspectors would have difficulty determining if removal of trees over 24 inches stump diameter was permissible, as operations conducted under 14 CCR 1052.4 does not permit such large trees to be removed. To avoid this situation, operations conducted pursuant to 14 CCR § 1038(b) concurrently in the same geographic area as § 1052, 4(c) shall not remove diseased trees in excess of the diameter limit required under 14 CCR § 1052.4(d) (2). This requirement was added as an option in the 15 Day notice rule text. The effect of this amendment is to reduce the chance of removal of green (live) trees greater than 24 inches, while still permitting the removal of large diameter dead snags which often are unacceptable fire hazards in locations such as fuel breaks and roads. This option was adopted by the Board.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered several different conceptual regulatory alternatives as described below. The alternatives represent a variety of fuel hazard reduction vegetation manipulation and geographic applicability standards.

1. Fuel Reduction within 500 feet of Structures, Roads and Suppression

Ridges— This alternative would permit vegetation treatment within 500 feet from a legally permitted structure, either side of public, federal road, mainline road or private road providing access to legally permitted structures, or either side of a ridge suitable for fire suppression. Vegetation treatment includes harvests of trees up to 16 inches DBH; post harvest thinning or selection stocking standards; and removal of ladder fuels to a height equivalent to the average height of the base of the post harvest stand, but not less than 8 feet.

Finding: The alternative was rejected as it does not include a vegetative treatment prescription that was sufficiently intensive to achieve fuel hazard reduction goals. Removal of 16-inch maximum size trees was determined to not provide an adequate reduction in residual tree crown bulk density and results in limited contribution towards reduction in crown fire spread. Also the geographic scope was determined to be inadequate to provide an acceptable level of protection to homes. This alternative was evaluated to be very expensive to implement for an individual land owner in that intensive fuel treatments are required which produce low value biomass. Minimum amounts of larger, high values trees that could contribute to both fuel reduction and economic viability goals were not included.

- 2. Community Wildfire Protection Plan (CWPP) -** This alternative permits vegetation treatment in the “Communities at Risk”, within ¼ mile buffer in the “Wildland Urban Interface” (WUI) areas, in watersheds at risk, and strategic locations as designated in the CWPP(a CWPP is defined in federal law, Standards in Public Law 108-148, the Healthy Forest Restoration Act of 2003. This law is on file in the official rulemaking file for this regulation). Vegetation treatments include focus on the creation of shaded fuel breaks. Specifications include only single tree selection, minimum of 40% crown closure, post harvest minimum stocking standards, and slash treatment of operations generated fuels.

Findings: This alternative was rejected because the implementation of the fuel treatments would depend on the existence of a certified Community Wildfire Protection Plan. While federal funding and local expertise is developing to create such plans, they are currently not widely understood, developed or used. This limitation would not promote extensive on-the- ground application of the field treatments in the immediate time period (2005-2007).

- 3. Significant Fire Threat areas in the WUI** – This alternative permits vegetative treatments in timberlands throughout the WUI area (the Community at Risk and up to 1.5 mile buffer) with significant fire threats (as mapped by FRAP). Vegetation treatments focus on the creation of shaded fuel breaks in the Community at Risk and other strategic significant fire threat areas in the WUI. Treatments and permit conditions include reconfiguration of surface fuels to promote maximum 4 foot flame length; increasing the space between the ground and live co-dominant tree crown base to at least 8 feet; no specific diameter limit for commercial tree removal; RPF certification of prescription implementation (at least 80 percent of the landscape treated); canopy cover minimums of 30% to 40% for Sierra Mixed Conifer forest types (SMC) or 50% to 60% for Redwood/Douglas Fir (RWD/DF); and post harvest thinning or selection stocking standards.

Finding: This alternative was rejected because the geographic scope limitation is based on a GIS modeled perimeter. Lack of certain application of the perimeter in the field would create an enforceability problem. Additionally, the inclusion of no maximum tree harvest size limit raised concerns over the removal of larger size trees not needed for fuel hazard objectives.

- 4. Expand Defensible Space for Structures to 300 feet-** This alternative included treatments up to 300 feet from a structure or property line in lands classified as having High, Very High or Extreme Fire Threats. Vegetation treatments include creating defensible space/vegetative treatment standards outline by 1038 (c), (PRC 4291, 4584). This alternative depends on passage of new legislation to authorize this activity.

Findings: This alternative was rejected as the legislative action necessary to implement the action was not passed in the State Legislature.

- 5. THP Exemption for Hazardous Fuel Reduction up to 300 ac. -** This alternative adds fuel hazard reduction to the list of activities exempt from a THP under section 1038. It requires the Board to determine that fuel hazard reduction, and the commercial wood products generated by the operation, meets the statutory intent of PRC 4584 (b), “*exempt a person from a THP when engaged in forest management activities that are limited to] removal or harvest of... minor forest products, including firewood*”. Upon determining that products generated by fuel hazard reduction projects meet this intent, Forest Practice Rules section 895.1 Definition, and section 1038, Exemption, can be amended to include specific fuel hazard reduction prescriptive/performance based language. The end result of this method is an RPF now has an option to conduct fuel hazard reduction projects without preparing a Timber Harvesting Plan; only an “Exemption Form” per 1038.2 would be filed.

Under this alternative, the geographic location of treatments includes any timberland area not to exceed 300 acres per exemption. Vegetation treatments and permit requirements include elimination of the vertical continuity and the horizontal continuity of vegetation, increasing the diameter of the post harvest stand, post harvest commercial thinning stocking standards, maximum 18 inches stump diameter trees may be removed, and RPF certifies preparation of the project.

Finding: The Board rejected this alternative after determining that commercial forest products (small sawlogs and biomass) generated by fuel hazard reduction projects may not meet the legislative intent for minor forest products. There is little legislative history clarifying the intention for minor forest products. The Board determined a discussion of the definition of minor forest products was not suitable at this time.

- 6. Standards in Public Law 108-148, the Healthy Forest Restoration Act of 2003, (HFRA) -** The objective of this alternative is to mirror the requirements of the HFRA requirements. Geographic location is the WUI as defined in P.L. 108-148 (1/2 to 1 1/2 mile from Communities at Risk or as described in a wildfire community protection plan), condition class 2 and 3 lands, near municipal water supplies, or watersheds that feed into municipal water supplies. Vegetation treatments to create defensible space would be as outline by 14 CCR1038 (c), (PRC 4291, 4584).

Finding: This alternative was rejected as it is dependent on the terms and conditions outlined in the HFRA. One of the conditions is the development of a certified Community Wildfire Protection Plan. While federal funding and local expertise is developing to create such plans, they are currently not widely understood, developed or used. This limitation would not promote extensive on-the-ground application of the field treatments in the immediate time period (2005).

- 7. Lake Tahoe Pilot Project -** The objective of this alternative is to take advantage of the current political support for preserving the unique watershed values of Lake Tahoe via fuel hazard reduction. This would provide an opportunity to apply treatments on a limited basis and evaluate it in a high profile, challenging resource protection situation. The geographic location is the WUI as described in the Tahoe Basin Fuels Reduction Action Plan (1250 ft. mile from urban areas). Prescriptions and operational requirements would be in accordance to CWPPs or other fire protection agency plans developed.

Finding: This alternative was rejected as the Board received limited input from stakeholders in the Lake Tahoe Basin on developing this project.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects as a result of the proposed rules. The Board analyzed the potential cumulative effects and significant adverse environmental effects resulting from the treatments proposed in this regulation. The Board determined that the regulation has impacts that are individually limited and not cumulatively considerable. This determination is based on, among other things, the application of the regulation on a limited geographic area, incorporation of mitigation measures to minimize potentially significant impacts, and application of the operational provisions of the Forest Practice Rules. These findings are discussed in the “**Notice of Decision**” under **General Findings**. No other alternative before the Board provided better protection and yet met the purpose of the proposed regulation.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

This regulatory proposal is not considered to cause a significant adverse economic impact because it is a voluntary action each person or entity will have made their own investigation and conclusions on any net benefits to be derived by implementing the regulation. The proposed action is especially designed to be “regulatory relief”, and reduce the economic burden of treating hazardous forest fuels. The Board estimated that the difference in economic relief provided by this regulation is approximately \$10,000 to 20,000 per plan submitted. This is based on the differential in cost for preparation of an average Timber Harvest Plan (Buckeye Report, 2002) versus the estimated cost of submission of an Emergency Notice.

ADDITIONAL RELEVANT DOCUMENTS RELIED UPON

The following are additional documents were provided for the Board’s consideration during the rulemaking process to supplement previous information submitted to the Board and referenced in the *Initial Statement of Reasons*: See list in 15 Day Notice.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board finds there are no additional costs to any state agency, any state mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Div. 4 Sec. 17500 GC because of any duties, obligations or responsibilities imposed on state or local or agencies or school districts.

This regulation does not create any savings or additional costs of administration for any agency of the United States Government over and above the program appropriations made by Congress. Additional findings related to socio-economic impacts are described below:

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC §17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This determination is based on the regulation being not mandatory, and those choosing to use it will incur substantially less permit preparation costs than existing permitting regulations.
- Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

- Effect on small business: None. The Board has determined that the proposed amendments will not have an adverse affect on small business. The proposed regulation is designed to provide regulatory relief, leading to substantial reduction in regulatory filing and preparation fees.
- The proposed rules do not conflict with, or duplicate Federal regulations.

Pursuant to Government Code § 11346.2(b)(5): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

SUMMARY OF LAWS RELATING TO THE REGULATION

The Z'berg - Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the State's interest in the use, restoration, and protection of the forest resources. In this Act, Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. Public Resources Code Sections 4512, 4513 and 4551, gives the Board the authority to adopt such rules and regulations necessary to assure continuous growing and harvesting of commercial forest tree species; and to protect the soil, air, fish, wildlife and water resources.

The proposed amendment is being promulgated under the Board's statutory authority of PRC 4551 and 4592. This statute permits the Board to define an emergency condition. Such conditions permit Registered Professional Foresters (RPFs) to file an emergency notice with California Department of Forestry and Fire Protection (CDF) and immediately commence timber operations that address the bona fide emergency conditions.

PUBLIC COMMENTS AND RESPONSE

See: Response to 45 Day Notice Public, 15 Day Notice, and Hearing Comments

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